

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Citizens Telecommunications Company)
of North Dakota)
)
Red River Rural Telephone Association and)
Red River Telecom, Inc.)
)
Polar Telecommunications, Inc.)
)
Dickey Rural Telephone Cooperative and)
Dickey Rural Access, Inc.)
)
Joint Petition for Waiver of the Definition of "Study Area")
Contained in Part 36, Appendix--Glossary of the)
Commission's Rules)
)
Petition for Waiver of Section 61.41(c) and (d),)
Section 69.3(e)(11) and 69.605(c) of the)
Commission's Rules)
)
TO: Chief, Common Carrier Bureau

JOINT PETITION FOR EXPEDITED WAIVERS

Citizens Telecommunications Company of North Dakota (Citizens) and Dickey Rural Telephone Cooperative¹ and Dickey Rural Access, Inc. (Dickey Rural), Polar Telecommunications Inc. (Polar) and Red River Rural Telephone Association and Red River Telecom, Inc. (Red River) (collectively, "Petitioners"), by their attorneys, hereby request waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's

¹ Dickey Rural Telephone Cooperative includes its subsidiary company Dickey Rural Communications.

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Rules.² The purpose of this waiver is to allow Citizens to sell the assets of its Wyndmere and Fairmount, North Dakota exchanges (approximately 649 and 379 access lines, respectively) to Red River; its Pembina, North Dakota exchange (approximately 635 access lines) to Polar; and its Gwinner and Lisbon, North Dakota exchanges (approximately 588 and 1,904 access lines, respectively) to Dickey Rural. The proposed transaction will entail the deletion of the Gwinner, Lisbon, Pembina, Wyndmere and Fairmount exchanges (the Pembina and Fairmount exchanges include some lines in Minnesota) from Citizens' North Dakota study area, and the addition of these exchanges to the existing North Dakota study areas of Dickey Rural Telephone Cooperative, Polar and Red River Rural Telephone Association. Dickey Rural Telephone Cooperative and Dickey Rural Access, Inc. also seek a waiver of the Commission's rule Section 61.41 (c) and (d) so that they may be regulated under rate of return once the assets of Citizens are acquired. In addition, Polar and Red River seek a waiver of the definition of "average schedule company" included in Section 69.605(c) of the Commission's Rules. Dickey Rural, Polar and Red River also seek a waiver of Section 69.3(e)(11) of Commission's Rules concerning participation in the NECA carrier common line tariff, as necessary. Polar, Red River and Dickey Rural all intend to participate in the NECA common line and traffic sensitive pools after the acquisition of the exchanges.

The Commission is requested to review and approve this Petition expeditiously. No new issues of law are raised by the Petition and the facts and circumstances supporting grant are similar

² The original of this Petition is being filed in Pittsburgh, PA. Copies of the Petition are being hand-delivered to the parties listed on the attached certificate of service.

in material and relevant respects to those involved in waiver requests that have been approved recently.³

Background

Citizens Telecommunications Company of North Dakota

Citizens presently owns and operates eight local telephone exchanges in North Dakota serving approximately 16,200 access lines. This transaction reflects the sale of the Fairmount, Gwinner, Lisbon, Pembina and Wyndmere exchanges which include a de minimis number of access lines in Minnesota served from the Fairmount and Pembina exchanges. These five exchanges collectively serve approximately 4,100 access lines and are part of Citizens' consolidated North Dakota study area. Citizens is a price cap carrier.

Dickey Rural Access, Inc.

Dickey Rural Access, Inc. (Dickey Rural) is a North Dakota company that was created to purchase and operate the Gwinner and Lisbon Citizens' exchanges (approximately 588 and 1,904 access lines, respectively). Dickey Rural is a subsidiary of Dickey Rural Telephone Cooperative, which presently serves 21 exchanges with approximately 2700 access lines within its existing North Dakota study area. Dickey Rural Telephone Cooperative also has another telephone company subsidiary included in its study area, Dickey Rural Communications, which presently serves 10

³ See, e.g., In the Matter of Petition for Waivers Filed by Union Telephone Company, Inc. and U S WEST Communications, Inc. Concerning Section 61.41(c)(2) and 69.3(e)(11) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd. 1840 (1997); In the Matter of Petitions for Waivers Filed by Alpine Communications, L.C., Butler-Bremer Mutual Telephone Company, Clarksville Telephone Company, Dumont Telephone Company, Grand River Mutual Telephone Corporation, Heartland Corporation, South Central Communications, Inc., Universal Communications, Inc., and U S WEST Communications, Inc. Concerning Sections 61.41 (c)(2), 69.3(e)(11), 69.3(i)(4), 69.605(c) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd. 2367 (1997).

exchanges with approximately 6100 access lines. Thus, the current Dickey Rural Telephone Cooperative study area is comprised of approximately 8800 access lines. Dickey Rural (comprised of the Gwinner and Lisbon exchanges for a total of approximately 2492 access lines) will be added to the existing Dickey Rural Telephone Cooperative study area.

Dickey Rural Telephone Cooperative is a non-average schedule company and has never elected to operate pursuant to price cap regulation. Dickey Rural Telephone Cooperative and Dickey Rural desire to operate as non-average schedule carriers after the acquisition of the Citizens' assets.

Polar Telecommunications, Inc.

Polar Telecommunications, Inc. (Polar) is a North Dakota telephone company that presently serves five exchanges with approximately 1614 access lines within its North Dakota study area. Polar is a wholly owned subsidiary of Polar Communications Mutual Aid Corporation d/b/a Polar Communications, which has a separate study area.

Polar wishes to add the Citizens' exchange to its existing study area. Polar is an Issuing Carrier in the NECA interstate access tariffs. Polar receives settlements from NECA on an average schedule basis and it has never elected to operate pursuant to price cap regulation. Polar desires to continue to operate as an average schedule carrier after the acquisition of the Citizens' assets.

Red River Telecom, Inc.

Red River Telecom, Inc. (Red River) is a North Dakota telephone company that presently serves two exchanges with approximately 1745 access lines within the Red River Rural Telephone Association North Dakota study area. Red River is a wholly-owned subsidiary of the Red River Rural Telephone Association. The Red River Rural Telephone Association presently serves four exchanges in North Dakota and three exchanges in Minnesota in its North Dakota study area.

Red River is an Issuing Carrier in the NECA interstate access tariffs. Red River receives settlements from NECA on an average schedule basis and has never elected to operate pursuant to price cap regulation. Red River desires to continue to operate as an average schedule carrier after the acquisition of the Citizens' assets.

Price Cap "All or Nothing" and "Permanent Choice" Waiver

The Commission's Rules establish two primary regulatory regimes for the provision of interstate exchange access by local exchange carriers (LEC) – rate of return⁴ and price caps.⁵ Further, the Commission's price cap rules require that when a non-average schedule company acquires a price cap company or a portion of a price cap company, the acquiring company and any LEC with which it is affiliated, must then be subject to price cap regulation.⁶ Moreover, the Commission's rules require that a company, once it has elected to be a price cap company, must continue as such.⁷ In the instant case, and in the absence of the requested waiver, Dickey Rural Telephone Cooperative, a non-average schedule company, would be subject to interstate price cap regulation for its provision of exchange access as an affiliate of Dickey Rural, because Citizens is currently a price cap company.

As demonstrated below, application of the "All or Nothing" rule and, subsequently, the "Permanent Choice" rule to Dickey Rural Telephone Cooperative and Dickey Rural would be

⁴ See, generally, 47 C.F.R. §§61.38 and 61.39.

⁵ See, generally 47 C.F.R. §61.41.

⁶ See, 47 C.F.R. §61.41(c)(2) and (3). This rule provision is also known as the "All or Nothing" rule.

⁷ See, 47 C.F.R. §61.41(d). This rule provision is also known as the "Permanent Choice" rule.

inconsistent with the public interest. Accordingly, waiver of these rules, as they may be applied to this transaction, is justified.⁸

The Commission's decision to substitute price cap regulation for rate of return regulation was based on several factors and several presumptions. As a result, mandatory price cap regulation was applied only to the largest LECs and specifically made optional for smaller LECs such as Dickey Rural Telephone Cooperative, a rural company with a study area of approximately 8800 access lines, and serving an area of 4500 square miles. The considerations which led the Commission to refrain from imposing price cap regulations on small, rural companies are equally applicable to this situation.⁹

The Commission implemented price caps as an incentive to encourage efficiencies and thereby promote competitiveness within the industry. Price cap regulation, however, was applied on a mandatory basis only to the Regional Bell Operating Companies and GTE, in recognition that these companies share similarities which support price cap regulation – geographic diversity, enormous subscriber bases, high activity levels in both regulated and nonregulated markets, and access to national markets. The Commission specifically targeted the appropriate companies to be regulated under the price cap system: “large, publicly-traded firms, that compete daily for sales of nonregulated products and services, in the financial markets, and in the labor markets.”¹⁰ Thus, the

⁸ The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the “public interest.” Wait Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 93 S.Ct. 461 (1972).

⁹ See, Minburn Telecommunications, Inc., 14 FCC Rcd 14184 (Com. Car. Bur. 1999); US WEST Communications, Inc. and Nemont Telephone Cooperative, Inc. et al., 9 FCC Rcd 198 (Com. Car. Bur. 1993); US WEST Communications, Inc. and Triangle Telephone Cooperative Association, Inc. et al., 9 FCC Rcd 202 (Com. Car. Bur. 1993).

¹⁰ In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd. 6786, 6790-91 ¶ 33 (1990) (“Price Cap Order”); see also Order on Reconsideration, 6 FCC Rcd. 2637 (1991), aff’d sub nom., National Rural Telecom As’n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

Commission's regulatory framework was premised upon its application to companies with a diverse and broad scope of operation.

In refusing to impose price cap regulation universally upon all LECs, the Commission itself acknowledged the potential adverse effects of this regulatory structure when applied to smaller LECs. Noting that small and mid-size companies may have fewer opportunities to achieve cost savings and efficiencies, the Commission acknowledged that these companies are less viable candidates for price caps. In particular, the Commission recognized that a major component of its price cap regime, the productivity factor element, was potentially inapplicable to these types of companies.¹¹ The Commission concluded that "evidence accumulated in [the price cap] proceeding casts doubts on whether all carriers below the largest eight in size can reasonably attain the productivity goal required by the price cap index."¹²

Based on the Commission's policy pronouncements noted above, Dickey Rural Telephone Cooperative and Dickey Rural are exactly the type of small, rural carriers which the Commission previously found to be inappropriate candidates for price cap regulation. As indicated, the Dickey Rural Telephone Cooperative study area has approximately 8800 access lines over 4500 square miles. Even after the proposed transaction, the Dickey Rural Telephone Cooperative study area will be significantly smaller than any of the carriers subject to mandatory price cap regulation. It also will be far smaller than many other carriers that have been granted waivers of Section 61.41(c)(2) of

¹¹ See, Price Cap Order, 5 FCC Rcd. at 6799 ¶ 103.

¹² Id. ¶ 104.

the Commission's Rules.¹³ Accordingly, in balancing the benefits to be gained under price cap regulation against the costs that would be incurred by this small, rural LEC, it is clear that the public interest is better served by a grant of the instant waiver request.¹⁴

Finally, the Commission has indicated that its two primary concerns regarding price cap waivers are "cost-shifting between affiliates"¹⁵ and "gaming the system," i.e., "building up a large rate base under rate of return regulation, then opting for price caps again and cutting its costs to an efficient level."¹⁶ Neither situation is present here.

¹³ See, e.g., CenturyTel of Northwest Arkansas, LLC et al., Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c) and 69.3(g)(2) of the Commission's Rules, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-1434 (Acc. Pol. Div. Rel, June 27, 2000) (approving the conversion of 214,270 access lines from price cap to rate-of-return regulation); ALLTEL/Aliant Merger Order (approving the conversion of approximately 300,000 access lines from price cap to rate-of-return regulation); In the Matter of ALLTEL Service Corporation, Petition for Waiver of Section 61.41 of the Commission's Rules, Order, 8 FCC Rcd. 7054 (Com. Car. Bur. 1993) (approving the conversion of approximately 285,000 access lines from price cap to rate-of-return regulation).

¹⁴ Past Commission actions have shown that the Commission is sensitive to minimizing regulatory and administrative burdens upon small LECs. See In the Matter of Regulation of Small Telephone Companies, Report and Order, 2 FCC Rcd. 3811 (1987) ("Small Company Order"), In the Matter of Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Report and Order, 8 FCC Rcd. 4545, 4548 ¶ 21, 4556 ¶ 76, 4559-60 ¶ 96 (1993) ("Small Company Optional Incentive Order"), pets for recon. denied, pet. for clarification granted, Order on Reconsideration, 12 FCC Rcd. 2259 (1997).

¹⁵ See In the Matter of U S WEST Communications, Inc. and Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules and Eagle Telecommunications, Inc. Petition for Waiver of Section 61.41(c) of the Commission's Rules, Memorandum Opinion and Order, 10 FCC Rcd. 1771, 1775 ¶¶ 23-24 (footnote omitted) (1995) ("Eagle Decision"), aff'd on recon., Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd. 4664 (1997).

¹⁶ Id. ¶ 23 (footnote omitted). A similar set of criterion also was considered by the Commission's Accounting and Audits Division. See In the Matter of U S WEST Communications, Inc., Copper Valley Telephone, Inc., Midvale Telephone Exchange, and Table Top Telephone Company Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules and Copper Valley Telephone, Inc., Midvale Telephone Exchange, and Table Top Telephone Company Petition for Waiver of Section 610.41(c) of the Commission's Rules, Memorandum Opinion and Order, 10 FCC Rcd. 3373, 3376-77 ¶ 18 (1995) ("Copper Valley"), aff'd on recon., Memorandum Opinion and Order, DA 99-1845, rel. Sep. 9, 1999.

First, Dickey Rural, upon completion of this transaction, will operate the to-be-acquired exchange separate and apart from Citizens. This transaction culminated as a result of an “arms-length” transaction between stand-alone entities. No ownership, directorate, or management affiliation between Dickey Rural and Citizens will arise from this transaction. With regard to concerns about “gaming the system,” as operationally distinct entities, it is not possible for Citizens to gain any economic benefit from a grant of this requested waiver to Dickey Rural. Further, even assuming the possibility exists, the Commission would be in a position to investigate its concerns in a subsequent proceeding because, as the Commission has previously noted, any Citizens “reacquisition would require a second study area waiver.”¹⁷

As demonstrated herein, Dickey Rural submits that the efficiencies created by the purchase and sale of the Gwinner and Lisbon exchanges to Dickey Rural outweigh any concern over “gaming the system.” Dickey Rural is not affiliated with Citizens and is not within the class of carrier deemed by the Commission to be a candidate for price cap regulation. Accordingly, in that the public interest would be best served by permitting Dickey Rural to operate the Gwinner and Lisbon exchanges under interstate rate of return regulation, Dickey Rural Telephone Cooperative and Dickey Rural submit that a narrow waiver of the “All or Nothing” rule and the “Permanent Choice” rule, is both appropriate and consistent with existing Commission policy.

Average Schedule Waiver

As indicated herein, Polar and Red River are average schedule companies and they wish to retain their average schedule status. Thus, Polar and Red River request a waiver of Section 69.605(c), if necessary, so that they may retain average schedule status when the Citizens exchanges are added to their existing average schedule study areas.

¹⁷ Copper Valley, 10 FCC Rcd. at 3377.

Section 69.605(c) defines an "average schedule company" as a telephone company that was participating in average settlements on December 1, 1982.¹⁸ This definition "grandfathers" existing average schedule companies as of December 1, 1982, but precludes the creation of new average schedule companies or the conversion of cost companies to average schedule companies after that date without a waiver from the Commission.¹⁹

The Section 69.605(c) definition refers expressly only to new or converted average schedule companies, and makes no explicit attempt to address the status of existing average schedule companies as they grow or contract via the addition or subtraction of subscribers or exchanges. In some instances, the Commission has not even required waivers of the Section 69.605(c) definition when existing average schedule companies, wishing to retain their average schedule status, acquired price cap or cost exchanges.²⁰ In other instances, the Commission has granted waivers of the Section 69.605(c) definition when the average schedule companies, wishing to retain their average schedule status, were comparable in size (as measured by access lines) and acquired approximately the same or more access lines from a price cap or cost exchange than Polar and Red River.²¹ For example, in All West et al. and Qwest Corporation, two average schedule companies, Manti (1,602 access lines) and Skyline (1,609 access lines), were granted Section 69.605(c) waivers when they acquired 1,887 and 1,407 access lines, respectively, from Qwest, a price cap carrier. In the Alpine Order, Clarksville, an average schedule company and subsidiary of Butler-Bremer Mutual

¹⁸ 47 C.F.R. §69.605(c).

¹⁹ See Wilderness Valley Telephone Company, 13 FCC Rcd 4511 (1998).

²⁰ See, e.g. GTE Midwest Incorporated and Winnebago Cooperative Telephone Association, 9 FCC Rcd 7789 (1994); Farmers Mutual Telephone Company et al., 11 FCC Rcd 9380 (1996).

²¹ Red River only has approximately 1745 access lines and is acquiring approximately 1027 access lines. Polar only has approximately 1614 access lines and is acquiring approximately 635 access lines.

Telephone Company with 1,926 access lines, was granted a Section 69.605(c) waiver when it acquired 931 access lines from U S WEST, a price cap carrier.²²

Grant of this waiver is consistent with the Commission's goals in permitting settlements on the basis of average schedules. As noted in Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C.,²³ the special circumstances that the Bureau has found to justify waivers of Section 69.605(c) fall into three broad categories, including a category "to ensure a smooth settlement process [where] average schedule companies ... have acquired another company, and [have been allowed to merge] the combined companies ... into one average schedule study area."²⁴ Because jurisdictional separations and Universal Service Fund calculations are performed at the study area level, the Bureau recognized that the application of Section 69.605(c) in these instances would have the unintended effect of requiring the pre-existing company to convert from average schedule status to cost-based settlements in order for the company to be able to acquire one or more small exchanges. The Bureau determined that such an effect would be unduly burdensome.

The proposed transactions satisfy the same special circumstances as those found to justify prior "smooth settlement process" category Section 69.605(c) waivers. Polar and Red River, existing and established average schedule companies, are acquiring small, rural exchanges that they desire to consolidate into their existing North Dakota study areas as well as into their existing

²² See, Alpine Order at ¶ 15. See also, In the Matter of Petition for Waivers Filed by Baltic Telecom Cooperative, Inc., East Plains Telecom, Inc., and U S WEST Communications, Inc. Concerning Sections 69.3(e)(11), 69.3(i)(4), 69.605(c) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, AAD No. 96-45, 12 FCC Rcd 2433 (Acc. Aud. Div.) (rel. February 27, 1997) (Commission granted waiver to an average schedule affiliate of Baltic Telecom Cooperative, Inc., also an average schedule company serving 1,400 lines when the affiliate acquired 792 lines from U S WEST).

²³ Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C., CC Docket No. 96-45, DA 00-2473 (Acc. Pol. Div., rel. Nov. 3, 2000) at Par. 13,

corporate structures. As noted in this Petition, the proposed transactions will create significant public interest benefits.

If Section 69.605(c) were applied to the proposed transactions, it could have the unintended effect of requiring Polar and Red River to convert their existing exchanges from average schedule status to cost-based settlements. Such a conversion would be unduly burdensome because Polar and Red River would have to spend time, effort and funds on cost studies that they have heretofore used to improve the quality of service furnished to their subscribers. As demonstrated above, the Commission has previously granted waivers for small average schedule companies, with approximately the same number or more access lines (post acquisition) than Polar and Red River. Since Polar and Red River fall within the range of other average schedule companies that the Commission found did not have sufficient resources or expertise to justify conversion of their average schedule status, the Commission should grant a waiver of Section 69.605(c).

In addition, the proposed average schedule waiver will not result in unintended effects on interstate revenue requirements or in administrative burdens on the Commission or NECA. Although Polar and Red River are both subsidiary companies of parent companies operating in North Dakota, the newly acquired exchanges will be integrated into the existing corporate entities of Polar and Red River. Thus, there will be no change in the existing relationship between the subsidiary and parent companies.

In previous similar circumstances, the Commission also has imposed certain requirements to ensure that there is no unintended effect on interstate revenue requirements or in administrative

²⁴ See Baltic Telecom Cooperative et al., AAD No. 96-95, 12 FCC Rcd 2433 (Acc. Aud. Div. 1996); Accent Communications, Inc. et al., AAD No. 95-124, 11 FCC Rcd 11513 (Acc. Aud. Div. 1996); BEK Communications I, Inc. et al., AAD No. 95-72, 11 FCC Rcd 10855 (Acc. Aud. Div. 1996).

burdens on the Commission or NECA. First, the Commission has required the companies and their affiliates to report to NECA on a combined basis for interstate average schedule and USF purposes, subject to the limitations established on USF for acquired exchanges. Second, if any affiliate converted from average schedule status to cost-based settlements, or elected Section 61.39 treatment, the Commission required all other affiliates to convert to that settlement status. Third, the Commission permitted the average schedule status of the companies to remain in effect only while they were under common control with their respective affiliates.

Polar and Red River are willing to accept similar conditions to ensure that the waivers will not result in unintended effects on the petitioners' interstate revenue requirements or result in an administrative burden on the Commission or NECA.

Waiver of Section 69.3(e)(11)

Dickey Rural, Polar and Red River also request a waiver of Section 69.3(e)(11), if necessary, in order to continue to allow them to use NECA as their tariff pool administrator. Section 69.3(e)(11) requires that any changes in NECA common line tariff participation and long term support resulting from a merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following the merger or acquisition. Thus, Section 69.3(e)(11) may preclude Dickey Rural, Polar and Red River from participating in the NECA common line tariff until the next annual access tariff filing effective date following the consummation of the acquisition transaction. This would require Dickey Rural, Polar and Red River to file interstate tariffs, and assume the cost and administrative burden associated with that process. Moreover, the inclusion of the small number of acquired access lines in the NECA carrier

common line tariffs would represent a minimal increase in NECA common line pool participation and would not unduly increase the complexity of administering the LTS program.²⁵

In light of the fact that Dickey Rural, Polar and Red River are extremely small carriers and the administrative and financial burdens that could result in the absence of a waiver, they request a waiver of Section 69.3(e)(11) to the extent necessary for them to add the Citizens exchanges to their study areas and include them in the NECA pools upon the closing date of this acquisition.

Study Area Waiver

Part 36 of the Commission's Rule "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984.²⁶ This "freeze" was due, in part, to the Commission's concern over the level of interstate cost recovery by LECs from the Universal Service Fund ("USF"): "[t]he Commission took that action, in part, to ensure that LECs do not set up high cost exchanges within their existing service territories as separate study areas to maximize high cost support."²⁷ At the same time, the Commission also recognized that its rules were not aimed at discouraging "the acquisition of high cost exchanges or the expansion of service to cover high cost areas."²⁸ Indeed, the Commission's Common Carrier Bureau ("Bureau") has implemented this policy decision by holding that changes in study areas that "result from the

²⁵ See, e.g. Saddleback Communications and Qwest Corporation, CC Docket No. 96-45 (DA 01-2777) (Acc. Pol. Div.) (rel. November 30, 2001) (Commission granting waiver of 69.3(e)(11) for the acquisition of approximately 2700 access lines).

²⁶ See 47 CFR Part 36, Appendix—Glossary.

²⁷ Eagle Decision, 10 FCC Rcd. At 1773 ¶ 10, citing In the Matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 50 Fed. Reg. 939 (Jan. 8, 1985)

²⁸ In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325, 48337 ¶ 65 (Dec. 12, 1984).

purchase or sale of exchanges in arms-length transactions” “do not conflict” with the concerns prompting the study area freeze.²⁹

The Commission has also established a three-prong test for deciding whether study area waivers should be granted. The Commission should approve such waiver requests if it determines:

[F]irst, that the change will not affect adversely the USF support programs;

[S]econd, that the state commission having regulatory authority does not object to the change; and

[F]inally, that the public interest supports grant of the waiver.³⁰

As demonstrated herein, the overall concern prompting the “freeze” in study areas is not an issue in this transaction, and the Commission’s three-prong test will be satisfied. Accordingly, the Petitioners respectfully request that the Commission grant the study area waiver permitting: (1) Citizens to remove the Gwinner, Lisbon, Pembina, Wyndmere and Fairmount exchanges from its North Dakota study area; (2) the affiliation of the Gwinner and Lisbon exchanges with Dickey Rural Telephone Cooperative’s existing North Dakota study area; (3) the affiliation of the Pembina exchange with Polar’s existing North Dakota study area; and (4) the affiliation of the Wyndmere and Fairmount exchanges with the Red River Rural Telephone Association’s existing North Dakota study area.

A. The USF Impact Arising From this Transaction

Pursuant to Section 54.305(a) of the Commission’s rules, carriers purchasing high cost exchanges can only receive the same level of support per line as the seller received prior to the

²⁹ In the Matter of Contel of the West Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of “Study Area” contained in Part 36, Appendix-Glossary, of the Commission’s Rules, Oregon-Idaho Utilities, Inc., Petition for Waiver of the Definition of “Study Area” contained in Part 36, Appendix-Glossary, of the Commission’s Rules, Memorandum Opinion and Order, 5 FCC Rcd. 4570, 4571 ¶ 9 (1990) (emphasis added).

³⁰ See Eagle Decision, 10 FCC Rcd. At 1772 ¶5 (footnote omitted).

sale.³¹ This means that, by definition, there will be no USF impact arising from these transactions. Dickey Rural, Polar and Red River will receive the same amount of support as Citizens currently receives in these North Dakota exchanges. Accordingly, at this time, this transaction is a non-event for purposes of the USF.

B. State Commission Approval

On February 7, 2002, Red River, Polar and Dickey Rural each filed an application for certificate of public convenience and necessity with the North Dakota Public Service Commission, in which they asked the Commission to state in its final order that it does not object to the grant of this study area waiver. In addition, on March 19, 2002, Red River and Polar filed a similar request with the Minnesota Public Utilities Commission, in which they asked the Commission to issue a letter or order stating that it does not object to the grant of this study area waiver with respect to the small number of customers located in Minnesota served out of the North Dakota exchanges. The Petitioners will supplement this Joint Petition for Expedited Waivers when the Commissions issue their respective orders.

C. The Public Interest Will Be Served By Grant Of
The "Study Area" Waivers Requested Herein

Polar and Red River are established local exchange carriers with a proven record of providing high-quality telecommunications facilities and services to residents and businesses in rural North Dakota. Similarly, Dickey Rural will be affiliated with Dickey Rural Telephone Cooperative, also an established local exchange carrier with a proven record of providing high-quality telecommunications facilities and services to residents and businesses in rural North Dakota. These companies desire to expand their operations into the Citizens' exchanges, which are

³¹ See, 47 CFR §54.305(a).

contiguous to their current operations. Once acquired, these exchanges will be under local ownership and management, whereas as part of Citizens, they are not. The Petitioner Buyers, which will have local management and service personnel, expect to provide enhanced customer response time and service.

In addition, Dickey Rural, Red River and Polar also plan to offer advanced services, such as DSL, and an expanded list of vertical services. For example, Red River will offer voice mail, caller ID and selective call acceptance or rejection. Red River also contemplates expanding the local calling area to include calls between its existing Hankinson exchange and the new Fairmount exchange, which calls, currently, are long distance. Polar will offer enhanced data services including frame relay and ATM, voice mail, call trace, preferred call forwarding, auto recall and callback and selective call acceptance or rejection. And, Dickey Rural will offer new services as supported by customer demand. Accordingly, the proposed study area waivers will serve the public interest.

As detailed above, the operation of Section 54.305(a) of the Commission's Rules means that, by definition, there can be no adverse impact on the USF from the subject transactions and proposed study area boundary changes. Hence, it appears that the supplemental information requested by the Bureau in its Public Notice³² is no longer necessary or relevant, because it deals with universal service support impact calculations that no longer need to be made. Petitioners note that several recent study area waiver petitions have been accepted and granted without this supplemental information.³³ Petitioners will amend this petition if the Bureau determines that some or all of this supplemental information remains necessary and relevant.

³² Common Carrier Bureau Establishes Expedited Processing Procedures for Petitioners Seeking Part 36 Study Area Waivers, 10 FCC Rcd 13228 (1995).

³³ See Valor Telecommunications of Texas, LP and GTE Southwest Incorporated, 15 FCC Rcd 15816 (2000); ATEAC, Inc., 16 FCC Rcd 849 (2001).

Conclusion

For the reasons stated herein, Petitioners respectfully request that the Commission expeditiously review and approve this Petition. This Petition raises no new issues of law, is supported by Commission precedent and the facts involved in this petition clearly demonstrate that the public interest will be served by such an expeditious grant. Petitioners respectfully submit that an expeditious grant of this Petition will serve the public interest by affording the residents and business customers of these rural exchanges the benefits of the planned transfers.

Respectfully submitted,


DICKEY RURAL TELEPHONE COOPERATIVE

DICKEY RURAL ACCESS, INC.

**RED RIVER RURAL TELEPHONE
ASSOCIATION**

RED RIVER TELECOM, INC.

POLAR TELECOMMUNICATIONS, INC.

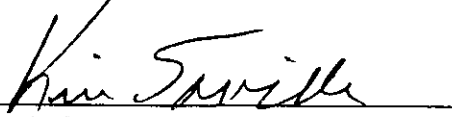
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Their Attorneys

Dated: April 5, 2002

**CITIZENS TELECOMMUNICATIONS
COMPANY, OF NORTH DAKOTA**

By 

Kevin J. Saville
Associate General Counsel

Citizens Communications Company
2378 Wilshire Blvd.
Mound, MN 55364
Tel: (952) 491-5564

Dated: April 2, 2002

CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing "Joint Petition for Expedited Waivers" were served by first class U.S. mail or hand delivery on this 5th day of April, 2002, to the persons listed below:

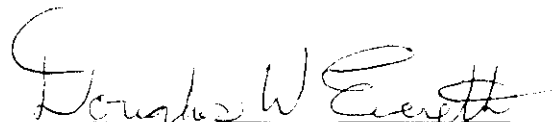
William F. Canton, Acting Secretary
Federal Communications Commission
Portals II, TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

Dorothy Attwood, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street S.W. - Room 5-C450
Washington D.C. 20554

Katherine Schroder, Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
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445 12th Street S.W. - Room 5-A426
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Pricing Policy Division
Wireline Competition Bureau
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Douglas W. Everette